UNITED STATES PATENT AND TRADEMARK OFFICE

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/696,964	VAIDYA, NEELAM N.
	Examiner	Art Unit	
	Junchun Wu	2191	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>08 October 2007</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-22* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

1.   This office action is in response to pre-appeal conference filed on Oct. 9, 2007.

2.   Claims 1-22 are pending.

Claim Rejections - 35 USC § 112

3.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4.   Claims 3 and 14 contain the trademark/trade name of "Java". Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph.

See Ex parte Simpson, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe "Java" and, accordingly, the identification/description is indefinite.

Claim Rejections - 35 USC § 103

5.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6.   Claims 1-3, 5, 11-14, 16, and 22 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Ho, and in view of Curtis (US Patent No. 6,601,236, hereafter "Curtis")

7.   Per claims 1 and 12

Ho discloses

- a method or system for patching applications, comprising: deploying a patch package on

  a first computer running a first type of operating system, wherein the patch package

  comprises a patching mechanism and a first set of one or more new code components

  ([0046] "*A patch generation process may be utilized to create the updating patch. In one*

  embodiment, a patch may contain the minimum number of bytes required to turn a

  program into an updated program. The patch generation may be at the byte level (e.g., a

  binary file may be created) or the file level. Further, the patch generation should be

  accumulative, such that the newer version of the patch is a superset of all older versions,

  relative to the same base version image." & [0047] "*The updated program is a new*

  program created by applying the patch to the base image of the program. The binary file

  for the updated program after patching is the same as the new program...")

- executing the patching mechanism on the first computer, wherein executing the patching

  mechanism comprises replacing a first set of one or more old code components in a first

  application with the first set of one or more new code components ([0053] "*After creating*

the updated program, program 130 is <u>replaced</u> with the updated program (step 540). In

one embodiment, a user may be notified after the patch is applied and updating of the

program is completed.").

But Ho does not explicitly disclose

- patching mechanism is also executable on a second computer running a second type of operating system.

However, Curtis discloses

- The installation program installs files using the cross-platform code, written in a cross-platform language such as Java (col.13 lines 29-42 "...*Further, the preferred*

  embodiment install program 17, which operates in the same manner across different

  operating system platforms, has the same affect on the operating system as the native

  installation program.")

- Therefore, it would have been obvious to a person of ordinary skill in the art at the time

  the invention was made to modify teaching of Ho with the teachings of Curtis to include

  the patching mechanism is also executable on a second computer running a second type

  of operating system in order to provide a method using a cross-platform installer install

  programs across multiple operating systems and simply interpreted as patch mechanism

  executing patches to a second computer which is running on different type of operating

  system.

8.   Per claims 2 and 13

the rejection of claim 1 is incorporated and Ho further discloses

- deploying the patch package on the second computer, wherein the patch package further

  comprises a second set of one or more new code components; and executing the patching

  mechanism on the second computer, wherein executing the patching mechanism

  comprises replacing a second set one or more old code components in a second

  application with the second set of one or more new code components, wherein the second

  application is functionally equivalent to the first application ([0034] *"In one embodiment,*

  connection 140 may be a physical connection used for transmitting program 130 or an

  updating patch to workstation 110. In another embodiment, connection 140 may be

  implemented as a wired or wireless connection using conventional communication

  protocols for installing program 130 or transmitting updating patches to workstation

  110. In still another embodiment, program 130 may be stored or exist on another

  workstation that is connected to workstation 110 through connection 140 and/or a

  network (not shown). The network may comprise one or more private network(s) (such

  as an intranet or LAN) and/or public network(s) (such as the Internet or PSTN). This

  approach may also be used for providing an updating patch to workstation 110 that is

  stored on another workstation or central server." From foregoing discussion, the

  updating patches may apply to other workstations running on different operating system.

)

9.   Per claims 3 and 14

the rejection of claim 1 is incorporated and Ho further discloses

- wherein the patching mechanism is written in Java ([0031] *"For example, Java 2
  Standard Edition ("J2SE) 1.4.2 could be the base image for all subsequent J2SE ~ 1 . 4 .
  2r~ele0as~es . Patch 125 may be a replacement to part of base image 120, or complied
  code, which can be inserted into base image 120 to create program 130."*).

10.   Per claims 5 and 16

the rejection of claim 1 is incorporated and Ho further discloses

- storing the first set of one or more old code components in a separate location before
  being replaced with the first set of one or more new code components ([0028] *"To update
  the program, the patch stored in the repository is used to distill the base image from the
  stored program. The base image is then combined with the new patch to generate an
  updated program that replaces the previous version of the program. The new patch may
  then be stored in the repository to facilitate subsequent updates to the program."*).

11.   For claims 11 and 22

the rejection of claim 1 is incorporated and Ho further disclose

- The user interface for the patching mechanism is the same on different platforms ([0012]
  *"The method comprises: installing a base image and a patch on the user device, where
  the combination of the base image and the patch is the program"* & [0030] *"The user
  device 110 may be implemented as a workstation running an operating system, such as
  Windows 98 2nd Edition, Windows ME, Windows NT 4.0 Service Pac Service Pack 2 or
  later, Windows XP Home Edition, or Windows XP Professional Edition."*).

12.   Claims 4, 6, 7, 15, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Ho, in view of Curtis and further view of Moshir et al. (US Pub. No. 20020100036,

hereafter "Moshir").

13.   Per claims 4 and 15

the rejection of claim 1 is incorporated

But Ho and Curtis do not disclose

- the patching mechanism is a script written in a cross-platform scripting language.

However, Moshir discloses

- the patching mechanism is a script written in a cross-platform scripting language ([0050]

  " *Programming languages and tools such as Java, Pascal, C++, C, Perl...,*").

- Therefore, it would have been obvious to a person of ordinary skill in the art at the time

  the invention was made to combine teachings of Ho and Curtis and further include the

  patching mechanism is a script written in a cross-platform scripting language by the

  teachings of Moshir in order to use suitable programming language to implement patch

  by those of skill in the art ([0050]).

14.   For claims 6 and 17

the rejection of claim 1 is incorporated

But Ho and Curtis do not disclose

- restoring the first set of one or more old code components to the first application.

However, Moshir discloses

- restoring the first set of one or more old code components to the first application [0065] *"in some instances when failure is detected the software update is disabled or removed 324 from the target computer, and that machine is returned substantially to its pre-update state or another acceptable (working) non-update state. This may mean that the installed software is taken off the target machine 322; or that not only is the software removed, but all the ancillary files (.dll's, .exe's, etc.) are restored to their pre-update state."*).

- Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine teachings of Ho and Curtis and further include restoring the first set of one or more old code components to the first application by the teachings of Moshir in order to provide a mean that target computer was backed up before the software update was installed. When software update is disabled, the backed itself is restored onto machine ([0065]).

15. For claims 7 and 18

the rejection of claim 1 is incorporated

But Ho and Curtis do not disclose

- wherein the patch package further comprises a patch information file, wherein the patch information file comprises information on the first set of one or more new code components and information regarding which application the patch package is applicable to patch.

However, Moshir discloses

- wherein the patch package further comprises a patch information file, wherein the patch information file comprises information on the first set of one or more new code components and information regarding which application the patch package is applicable to patch ([0079] "*The illustrated patch fingerprint comprises one or more general inventory install dependencies 912 that can be used to take a high-level look to see if a specific patch can be installed on a machine. It also includes a signature block 910 that can be used to request specific information from, a target computer 500, and an existence test 908 which can use the signature block information to determine if a specific patch has been loaded on a machine.*").

- Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine teachings of Ho and Curtis and further include the patch package further comprises a patch information file, wherein the patch information file comprises information on the first set of one or more new code components and information regarding which application the patch package is applicable to patch by the teachings of Moshir in order to check the information about the target computer that included software should be present (such as specific version of a program, a patch, a data file or a driver ([0090]).

16.   Claims 8-10 & 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ho, in view of Lambiase, Moshir and further view of Taylor (US Patent No. 6,161,218).

17.   For claims 8 and 19

the rejection of claim 7 is incorporated

Ho discloses

- the patch information file further comprises information on what bugs the patch package

  is operable to fix ([0026] *"The patch may be provided to perform various updates, such*

  as removing or correcting bugs in the program, adding functionalities to the program

  and/or removing functionalities from the program.").

But Ho, Curtis and Moshir fail to disclose

- information regarding which other patch packages the patch package is incompatible

  with.

However, Taylor discloses

- information regarding which other patch packages the patch package is incompatible with

  [col.7 lines 56-57].

- Therefore, it would have been obvious to one of ordinary skill in the art at the time the

  invention was made to combine teachings of Ho, Curtis and Moshir and further include

  information regarding which other patch packages the patch package is incompatible with

  by teaching of Taylor in order to scan all the patches in target package's information list

  and to verify that it is ok to install the patch [Taylor col.7 lines 20-22 & lines 39-41].

18.   For claims 9 and 20

the rejection of claim 8 is incorporated

But Ho does not disclose

- storing information on one or more other patch packages that have been previously

  applied to the first application in a package information file.

However, Moshir discloses

- storing information on one or more other patch packages that have been previously

  applied to the first application in a package information file ([0128] *"The offsite update*

  server can be configured to store in permanent memory the packages that have already

  been stored on each target computer. When a new package becomes available, or during

  the installation of an existing package, existing evidence of the software packages that

  need to be installed, as well as information about previous installations, is available in

  some embodiments at the offsite update server 528, and in other instances at the

  repository site 600.").

- Therefore, it would have been obvious to a person of ordinary skill in the art at the time

  the invention was made to modify teaching of Ho with the teachings of Moshir to include

  storing information on one or more other patch packages that have been previously

  applied to the first application in a package information file in order to check the

  availability of software patches by receiving a notice from administrator ([0128]).

19.   For claims 10 and 21

the rejection of claim 9 is incorporated

But Ho does not disclose

- detecting patch conflicts by comparing the patch information file to the package

  information file.

However, Moshir discloses

- detecting patch conflicts by comparing the patch information file to the package

  information file ([0080] *"These dependencies 912 are compared 808 with information*

  about the target computer 806 previously stored in the inventory library 918. If the install

  information and the inventory information don't match, then the patch is not installed. In

  some versions of the invention a message is sent to at least one administrator containing

  a list of components required (such as necessary hardware and software) for the

  install.").

Response to Arguments

Applicant's arguments filed on March 8, 2007 have been fully considered but they are not

persuasive.

In the remarks, Applicant argues that:

(a)   In regard to claims 1 and 12, Moshir fails to teach or suggest a method for patching

applications comprising deploying a patch package on a first computer running a *first type* of

operating system, wherein the patch package comprises a patching mechanism and a first set of

one or more new code components, and *wherein the patching mechanism is also executable on a*

second computer running a second type of operating system, and executing the patching

mechanism on the first computer, wherein executing the patching mechanism comprises

replacing a first set of one or more old code components in a first application with the first set of

one or more new code components.

Examiner's response:

(a)   Examiner disagrees.

Applicant's arguments with respect to claims 1 and 12 have been considered but are moot in view of the new ground(s) of rejection. Please see details of this office action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Junchun Wu whose telephone number is 571-270-1250. The examiner can normally be reached on 8:00-17:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Zhen can be reached on 571-272-3708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JW

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PATENT EXAMINER